

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
MONTANA DEPT OF TRANSPORTATION)	File Nos. 0004961951, 0005028256,
)	0005276067, 0005299543
COUNTY OF JEFFERSON, MONTANA)	
)	
Request for Waiver to License VHF Maritime)	
Frequencies)	
)	
Request for Waiver of Section 90.35(b)(3) of the)	
Commission's Rules to License)	
Industrial/Business Pool Frequency 452.175 MHz)	

ORDER

Adopted: August 9, 2013

Released: August 9, 2013

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The Montana Department of Transportation and the County of Jefferson, Montana (collectively Montana) have filed four applications¹ seeking authority to operate trunked and conventional private land mobile radio (PLMR) facilities on frequencies in the 150 MHz band designated for Part 80 ship and private coast communications.² Montana includes with its applications a request for waiver of the eligibility and operating requirements that apply to licensees operating on these maritime frequencies.³

2. The County of Jefferson (Jefferson County) also seeks a waiver to license one 450 MHz frequency from the Industrial/Business Pool.⁴ For the reasons stated below we grant both waiver requests under Section 1.925 of the Commission's rules.⁵

II. BACKGROUND

3. Between November 2011 and July 2012, Montana filed four PLMR applications seeking to license numerous 150 MHz frequencies at several locations throughout the state.⁶ Montana states that the purpose of its applications is to add new sites to its Interoperability Montana System (IM System) to increase capacity and expand coverage to un-served areas between or among authorized sites.⁷

¹ See Universal Licensing System (ULS) File Nos. 0004961951, 0005028256, 0005276067, 0005299543 (collectively, Montana Applications).

² 47 C.F.R. § 80.373(f).

³ See Request for Waiver attached to the Montana Applications (Montana Waiver Request).

⁴ See ULS File No. 0005028256. See also 47 C.F.R. § 90.35(b)(3).

⁵ 47 C.F.R. § 1.925.

⁶ See Montana Applications.

⁷ Montana Waiver Request at 3.

4. Montana's IM System uses both VHF trunked digital radio technology and collocated analog conventional repeaters to enable interoperable mobile wireless communications among Montana's state and county public safety agencies, Indian tribes, and the Federal government.⁸ Montana contends that interoperable communications are critical because the State's 550-mile border with Canada presents communication challenges to its law enforcement, federal, state, local and tribal entities.⁹

5. Montana states it chose VHF frequencies for its IM System because of the state's extensive geography and low population density. According to Montana, VHF technology provides an "optimum signal in terms of reliability and geographic coverage."¹⁰ Montana argues that the "cost savings of a VHF network over 800 MHz, 900 MHz and 700 MHz systems are substantial."¹¹

6. Montana further claims that its proposed expansion of the IM System is premised on maximum channel re-use of the public safety frequencies listed in Section 90.20 of the Commission's rules.¹² Nonetheless, due to unanticipated high levels of traffic on its initially constructed sites, Montana argues it needs additional spectrum to meet the demands imposed on the IM System.¹³

7. Consequently, Montana requests waiver of the Commission's Part 80 rules so that it may expand the IM System by using Part 80 ship and private coast frequencies listed in Section 80.373(f)¹⁴ of the Commission's rules.¹⁵ Specifically, Montana seeks waiver of following Part 80 rule sections so that it may integrate VHF maritime frequencies into its IM System:

- 80.105 (General obligations of coast stations),
- 80.106 (Intercommunication in the mobile service),
- 80.203 (Authorization of transmitters for licensing),
- 80.211 (Emission limitations)
- 80.213 (Modulation requirements),
- 80.215 (Transmitter power), and
- 80.373 (Private communications frequencies)¹⁶

8. Montana claims it satisfies the requirements of Section 337(c) of the Communications Act which provides that the Commission shall waive any requirement or regulation to the extent necessary to permit unassigned frequencies to be used for the provision of public safety services.¹⁷

⁸ *Id.* at 1.

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.* In fact, the majority of the frequencies requested in the Montana Applications are from the Public Safety Pool. See Montana Applications.

¹³ Montana Waiver Request at 4.

¹⁴ 47 C.F.R. § 80.373(f).

¹⁵ Montana Waiver Request at 1, 8-9. The VHF Part 80 ship and private coast frequencies which Montana seeks to license are listed in the attached appendix by ULS application file number.

¹⁶ Montana Waiver Request at 8. We note that Montana seeks a waiver of Section 80.206. While no such rule exists, we infer Montana is seeking a waiver of Section 80.106 entitled "Intercommunication in the mobile service." See 47 C.F.R. §§ 80.105, 80.106, 80.203, 80.211, 80.213, 80.215, 80.373.

¹⁷ Montana Waiver Request at 4-6. See also 47 U.S.C. § 337(c).

9. If the Commission determines, however, that Section 337(c) of the Communications Act cannot be applied here, Montana also argues it qualifies for relief under the waiver standard of Sections 1.3 and 1.925 of the Commission's rules.¹⁸ In this regard, Montana claims it satisfies the five factors which the Commission generally considers when applicants seek to use maritime spectrum for land mobile operations.¹⁹

10. Finally, in addition to the maritime frequencies, Jefferson County also seeks to license a 450 MHz frequency from the Industrial/Business Pool.²⁰ Jefferson County states that it has been licensed for years on this frequency and simply wants to "add it to a new base station location."²¹ In support of its request, Jefferson County includes with its application a supporting certification from an Industrial/Business Pool frequency coordinator.²²

11. On May 8, 2013, the Public Safety and Homeland Security Bureau (Bureau) sought comment on the Montana applications and associated waiver requests.²³ The Bureau received no comments.²⁴

III. DISCUSSION.

A. Section 337(c) Analysis

12. Section 337(c) of the Communications Act of 1934, as amended, (Act) provides that, in connection with an application by an "entity seeking to provide public safety service," the Commission "shall waive any requirement of this Act or its regulations implementing this Act (other than its regulations regarding harmful interference) to the extent necessary to permit the use of unassigned frequencies for the provision of public safety services ..." if the Commission finds that:

- "no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;"
- "the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations;"
- "the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made;"

¹⁸ Montana Waiver Request at 6. *See also* 47 C.F.R. §§ 1.3 and 1.925.

¹⁹ Montana Waiver Request at 9-11. *See also* Maritel, Inc. and Mobex Network Services, LLC, WT Docket No. 04-257, *Report and Order*, 22 FCC Rcd. 8971, 8987-88 at ¶26 (2007)(*Coast Station Flexibility Order*).

²⁰ Jefferson County seeks to license Industrial/Business Pool frequency 452.175 MHz at location 7. *See* ULS File No. 0005028256.

²¹ *See* Response to Notice of Return attached to ULS Application No. 0005028256 (Jefferson IB Waiver).

²² *See* Letter from RS/AAA to Federal Communications Commission (Aug. 27, 2012)(attached to ULS Application No. 0005028256)(RS/AAA Letter).

²³ *See* Public Safety and Homeland Security Bureau Seeks Comment on Applications and Waiver Request Filed by the State of Montana and Jefferson County to License VHF Maritime Radio Frequencies, *Public Notice*, 28 FCC Rcd 6332 (PSHSB 2013).

²⁴ The Montana Department of Transportation did, however, update the VHF maritime radio frequencies requested in ULS application No 0005299543 after release of the public notice based upon informal discussions with the U.S. Coast Guard.

- “the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and”
- “granting such application is consistent with the public interest.”²⁵

We note that an applicant’s failure to meet any one of the five criteria constitutes sufficient cause for the Commission to deny a request for waiver under Section 337(c).²⁶

13. In this instance, we find that Montana fails to meet the first criterion of Section 337(c) of the Act, *i.e.*, Montana fails to show that “no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use.” Although Montana contends that only channels within the VHF band would satisfy its operating requirements,²⁷ Commission precedent provides that this is not sufficient to meet the statutory waiver standard.²⁸

14. The Commission has consistently held that Section 337 applicants must show “that there [is] no unassigned public safety spectrum, or not enough for the proposed public safety use, in any band in the geographic area in which the Section 337 applicant seeks to provide public safety services.”²⁹ Consistent with the Commission’s position, the Bureau and the Wireless Telecommunications Bureau have repeatedly rejected the argument that an applicant must only show either the unavailability of frequencies in its preferred public safety band or, conversely, the unsuitability of frequencies in other public safety bands, for purposes of satisfying Section 337(c) of the Act.³⁰

15. Montana fails to meet the Section 337(c) standard because it analyzed only the availability of Public Safety Pool frequencies in the VHF band in which the Montana IM System operates.³¹ Thus we find that, without the necessary frequency search outside the VHF frequency band, Montana fails to satisfy the first criterion of Section 337(c), and therefore cannot obtain relief pursuant to Section 337.

B. Section 1.925 Analysis of Waiver Requests

16. Our finding that Montana fails to warrant waiver relief under Section 337 of the Act does not foreclose consideration of its alternative request for waiver relief under Section 1.925 of the Commission’s rules.³² Rather, the Bureau’s ability to undertake a waiver analysis pursuant to that section

²⁵ 47 U.S.C. § 337(c).

²⁶ See South Bay Regional Public Communications Authority, *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23796 ¶ 33 (1998); Township of Cinnaminson, New Jersey, *Order*, 22 FCC Rcd 4583, 4585 ¶ 6 (2007) (*Cinnaminson*), citing University of Southern California, *Memorandum Opinion and Order*, 16 FCC Rcd 2978, 2984 ¶ 15 (WTB 2001). See also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, 15 FCC Rcd 22709, 22768-69 ¶ 131 (2000).

²⁷ See Montana Waiver Request at 3 (noting that other frequency bands are “not as favorable as VHF spectrum”).

²⁸ See County of Marin, California, *Order*, 22 FCC Rcd 9165, 9167-68 ¶ 6 (PSHSB 2007); State of Ohio, *Memorandum Opinion and Order*, 17 FCC Rcd 439, 446-47 ¶ 15 (WTB 2002)(*Ohio*); State of Tennessee Department of Transportation, *Order on Reconsideration*, 15 FCC Rcd 24645, 24648-49 ¶ 9 (WTB 2000) (*Tennessee DOT*).

²⁹ *Balanced Budget Act Report and Order*, 15 FCC Rcd at 22769 ¶ 132 (footnotes omitted); see also H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 579-80 (1997) (Conference Report)(“spectrum must not be immediately available on a frequency already allocated to public safety services.”).

³⁰ See *supra* n. 28.

³¹ Montana Waiver Request at 3.

³² *Balanced Budget Act Report and Order* at 22769 ¶ 132 n.366, citing 47 C.F.R. § 1.925. See also County of

rests on the Commission's plenary authority under the Act to make rules and regulations necessary to achieve the Commission's over-arching statutory purposes, including "promoting safety of life and property through the use of radio communication."³³ As discussed below, we find that Montana has provided sufficient information in the record for us to consider whether waiver relief is justified under Section 1.925 of the rules.

17. To obtain a waiver under Section 1.925 of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;³⁴ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.³⁵

1. VHF Maritime Service Frequencies

18. Montana seeks waiver relief from Part 80 rules and requirements so that it may incorporate into its IM System a number of VHF maritime frequencies which are designated for ship-to-ship and ship-to-coast private communications under Section 80.373(f)³⁶ of the Commission's rules.³⁷

19. We examine Montana's request under the first prong of the waiver standard: application of the rules in this situation would not serve the underlying purpose of the rule(s) and that the grant of the waiver is in the public interest.

20. The "core purpose" of the Part 80 rules is to "serve the communications needs of marine vessels, especially with respect to communications in support of the safety of life and property at sea and on inland waterways."³⁸ The Commission closely scrutinizes requests to use Part 80 spectrum outside of

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Ocean, New Jersey, *Order*, 24 FCC Rcd 11299 (PSPWD 2009); Alan S. Tilles, Esq., *Letter*, 22 FCC Rcd 13577, 13581 and n.30 (2007) (noting that "[i]n addition to the Section 337 process, [public safety] entities can also seek a conventional waiver under Section 1.925 of rules.").

³³ County of Granite, Montana, *Order*, 24 FCC Rcd 5704, 5712 ¶ 17 (PSHSB 2009)(*Granite County*), citing 47 U.S.C. § 151. However, consideration of a Section 1.925 waiver request does not predetermine that we will grant relief. See, e.g., *Tennessee DOT*, 15 FCC Rcd at 24650 ¶ 12 (finding that applicant had not met its burden of showing that Section 1.925 waiver relief is justified); *New Hampshire DOT*, 14 FCC Rcd 19438, 19442-43 ¶¶ 10-11 (WTB 1999)(making similar findings). Generally, we have not considered whether waiver relief is warranted under Section 1.925 when public safety entities have submitted vague and insufficiently specific information. See *Cinnaminson*, 22 FCC Rcd at 4585-86 ¶ 7 (applicant did not make any assertions specific to the requested frequency pair); *City of Richmond, Virginia*, *Order*, 21 FCC Rcd 14384, 14390 ¶ 15 (PSHSB 2006)(granting limited waiver relief under Section 337 but finding that the applicant did not provide sufficient information about all of its proposed sites or implementation schedule to evaluate its request concerning the entire economic area).

³⁴ 47 C.F.R. § 1.925(b)(3)(i).

³⁵ 47 C.F.R. § 1.925(b)(3)(ii).

³⁶ 47 C.F.R. § 80.373(f).

³⁷ See Montana Applications. The specific maritime service frequencies Montana seeks to license are listed in the attached appendix.

³⁸ See *Coast Station Flexibility Order*, 22 FCC Rcd at 8971-72 ¶ 1. See generally Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92-257, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 16949, 16982-84 ¶¶ 66, 68 (1997).

the Part 80 framework to ensure that unintended erosion of the maritime spectrum and consequent derogation of the core purpose for that spectrum does not occur.³⁹

21. Our analysis is further guided by the Commission's *Coast Station Flexibility Order*, which lays out "some of the factors" the Commission considers when evaluating requests for waiver from applicants seeking to license land mobile radio systems on frequencies designated under Part 80 for VHF Public Coast (VPC) or Automated Maritime Telecommunications System (AMTS) use.⁴⁰ Although here Montana seeks to operate on maritime frequencies designated for ship-to-ship and ship-to-coast communications under Part 80, we find the factors the Commission laid out in the *Coast Station Flexibility Order* instructive in analyzing Montana's request.⁴¹

22. Specifically, in the *Coast Station Flexibility Order*, the Commission required waiver applicants to provide the following:

- The intention of the applicant to provide priority to maritime communications or why they believe the requirement should be waived;
- The distance of a proposed land mobile radio operation from the nearest navigable waterways;
- The magnitude of divergence sought from specific Part 80 technical requirements, such as power limits and emission masks;
- A showing that alternative spectrum that could accommodate the proposed PLMR or other land mobile radio service is unavailable or unsuitable for that purpose;
- A showing that authorization of the proposed operation, and grant of the associated waiver(s), would benefit public safety or homeland security. So showing "will be a factor militating in favor of grant of a waiver."⁴²

We now analyze Montana's waiver request based each of these criteria.

23. *Providing priority to maritime communications or explaining why the requirement should be waived.* The first factor requires waiver applicants to either show how they intend to provide priority to maritime communications or explain why the requirement should be waived.⁴³ Montana states that the Commission should waive the requirement to provide priority to maritime communications because the frequencies Montana requests are not used for maritime communications in Montana or the immediately

³⁹ See *Coast Station Flexibility Order*, 22 FCC Rcd at 8995 ¶ 21 (stating the Commission's concern over use of VHF Public Coast Station (VPC) and automated maritime telecommunications system (AMTS) spectrum pursuant to non-maritime radio service rules).

⁴⁰ See *id.* at 8986-87 ¶ 26.

⁴¹ See *Granite County*, 24 FCC Rcd at 5713 ¶ 21 (stating that examining Granite's request under the criteria of the *Coast Station Flexibility Order* is "appropriate in order to fully evaluate its waiver request and to provide guidance to prospective waiver applicants seeking to use ship and private coast station as well as VPC frequencies for public safety communications under Part 90."). See also *County of Silverbow, Montana, Order*, 24 FCC Rcd 12547, 12558-59 ¶ 29 (PSHSB 2009)(*Silverbow County*).

⁴² See *Coast Station Flexibility Order*, 22 FCC Rcd at 8986-87 ¶ 26.

⁴³ See *id.* at 8987 n.114 (stating that "if the applicant does not seek a waiver of the priority requirement, but instead intends to comply with that requirement, and satisfactorily demonstrates how it will achieve such compliance, that showing will be a factor favoring grant of the waiver(s)."). See also *id.* at 8991 ¶ 15.

surrounding area.⁴⁴ Nonetheless, because the frequencies requested by Montana conceivably could be used in the future for maritime purposes in Montana or the surrounding area, we are conditioning Montana's waiver to provide that Montana must give priority to any subsequent maritime communications on the requested frequencies.

24. *The distance of a proposed land mobile radio operation from the nearest navigable waterways.* The second factor a waiver applicant must address is the distance from its proposed land mobile radio operations to the nearest navigable waterways. The Part 80 frequencies on which Montana seeks to operate are designated for port operations.⁴⁵ Montana argues there is little demand within the State of Montana for commercial maritime or port operation communications because there are "no major navigable waterways within the State."⁴⁶ The Commission's Rules define navigable waters as "the waters shoreward of the baseline of its territorial sea and internal waters as contained in 33 CFR 2.05-25."⁴⁷ In the relevant portion of this section, navigable waters include "[i]nternal waters of the United States not subject to tidal influence that...[a]re or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage."⁴⁸

25. Montana is part of the Thirteenth Coast Guard District, which has compiled a list of navigable waterways within the state.⁴⁹ Examination of the list shows that Montana's navigable waters consist of five rivers and reservoirs on these rivers: Big Horn River, Kootenai River, Missouri River, Clark Fork River, and the Yellowstone River.⁵⁰ A 2012 analysis of Montana's freight infrastructure, however, reveals no use of these waterways for shipping.⁵¹

26. Thus, while Montana has navigable waterways within the state, there is no evidence that these waterways currently support the type of commercial maritime activity normally associated with port operation communications.

27. Moreover, staff in the Bureau performed an independent frequency-by-frequency analysis of the maritime frequencies Montana seeks to license in its applications and found no co-channel Part 80 licensees operating on these frequencies within the State of Montana.⁵² Staff did identify a few Part 80 licensees operating on some of these maritime frequencies in adjacent states but determined the distance from Montana's PLMR operations to those Part 80 licensees is sufficiently large as to require no further analysis.⁵³

⁴⁴ Waiver Request at 5, 10.

⁴⁵ See 47 C.F.R. § 80.373(f).

⁴⁶ Waiver Request at 10.

⁴⁷ 47 C.F.R. §80.5.

⁴⁸ 33 C.F.R. §2.05-25.

⁴⁹ See http://www.uscg.mil/d13/docs/cg_navigable_waterways.pdf.

⁵⁰ *Id.*

⁵¹ See Montana Freight Assessment: Trends and Opportunities to Improve Access and Create Freight Efficiencies for Montana Companies, Nicole Hagerman Miller, May 24, 2012. Available at http://www.mdt.mt.gov/business/rscg/docs/freight_assessment.pdf

⁵² For the offset frequency 156.990 MHz requested by the Montana Dept. of Transportation on ULS application file no. 0005276067, staff examined both the upper- and lower-adjacent channel Part 80 ship and private coast frequencies. See *infra* n. 71.

⁵³ Part 80 licensees on these frequencies in adjacent states are located well over 300 kilometers from Montana's proposed operations. We will, however, limit the County of Jefferson's proposed statewide operation on frequency

28. Finally, the Bureau received no comments arguing that Montana's proposed use of these frequencies would harm any existing maritime user.

29. Consequently, we conclude that Montana's operation on the ship-to-ship and ship-to-coast frequencies specified in its applications will not affect maritime communications due to the distance of the base stations from the closest navigable waterway supporting commercial maritime port operations and the lack of co-channel Part 80 licensees both within and adjacent to the state.⁵⁴

30. *The magnitude of divergence from Part 80 technical requirements.* The third factor a waiver applicant must address is the magnitude of divergence from the Part 80 technical requirements. Coast and ship stations operating on Part 80 frequencies in the 156-162 MHz band are limited to 50 watts and 25 watts transmitter output powers respectively.⁵⁵ However, Montana seeks to operate its base station and mobile equipment with a maximum transmitter output power of 100 watts.⁵⁶ We find this deviation relatively minor given the paucity of maritime communications within the state and lack of co-channel Part 80 licensees both within and adjacent to the state.

31. *Alternative spectrum is unavailable or unsuitable for the intended purpose.* The fourth factor requires a waiver applicant to show that alternative spectrum is either unavailable or unsuitable for the proposed operation.⁵⁷ Montana argues that alternative bands would require "a significant number of additional repeater sites to achieve the same level of reliable coverage."⁵⁸ For purposes of our Section 1.925 analysis, we find persuasive Montana's argument that VHF technology is the cornerstone of interoperability communications in Montana because it "provides the optimum signal in terms of reliability and geographic coverage" and because the cost savings of a VHF network over 800 MHz and 700 MHz systems are substantial.⁵⁹ Furthermore, we note that, with this set of applications, Montana seeks to "expand the coverage and increase the capacity" of its IM System which is built on VHF technology.⁶⁰ Thus, we conclude that only frequencies from the VHF band are suitable for Montana's proposed system expansion since only frequencies from this band can be seamlessly integrated into the IM System.

32. *Authorization of the proposed operation, and grant of the associated waiver(s), would benefit public safety or homeland security.* The final factor requires the waiver applicant to show that authorization of the proposed operation, and grant of the associated waiver(s), would benefit public safety or homeland security. Montana notes that its proposed system expansion will improve interoperability among "federal, tribal, state, county, and local government agencies."⁶¹ We find Montana satisfies this

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156.600 MHz to remain within the county in order to maintain geographic separation to co-channel Part 80 licensee call sign WRS931, licensed to Waterfront Property Management and operating in Bonner County, Idaho.

⁵⁴ Staff did identify Part 90 PLMR licensees operating within the state on the Part 80 frequencies specified in Montana's applications but performed no further analysis with respect to these licensees because Montana's applications include certifications that the applications were coordinated by certified Part 90 frequency coordinators. See Montana Applications.

⁵⁵ See 47 C.F.R. §§ 80.215(c)(1) and (e)(1).

⁵⁶ Waiver Request at 10. See also Montana Applications.

⁵⁷ This factor is a much less strict standard in comparison to Section 337(c)'s requirement that no other spectrum be immediately available.

⁵⁸ Waiver Request at 10.

⁵⁹ *Id.* at 3.

⁶⁰ *Id.*

⁶¹ *Id.*

criterion because its IM system provides local and state entities with “critical public safety communications” while enabling interoperability among “police, fire, emergency systems, and Federal agencies and departments.”⁶²

33. Based on our findings and review of the record, we conclude that strict application of Section 80.373(f) in this instance would not serve its underlying purpose. Specifically, we conclude there will likely be no adverse effect on the core purpose of the Commission’s allotment of frequencies for maritime use stemming from Montana’s operation on the maritime frequencies specified in its applications. We also conclude that the public interest would be served by granting Montana’s request for waiver. Because Montana has substantially addressed the waiver factors articulated by the Commission in the *Coast Station Flexibility Order*, we waive Section 80.373(f) of our rules and allow Montana to integrate the maritime frequencies specified in its application into its IM System. Furthermore, we allow Montana to operate on these maritime frequencies under Part 90 of the Commission’s rules subject to the conditions specified below.⁶³

34. We limit Montana’s operation on the maritime frequencies to the maximum power levels and antenna heights specified in its applications.⁶⁴ Should Montana seek to increase its operating power or antenna heights beyond these levels, it must file a new waiver request addressing the magnitude of divergence of its desired operating parameters from Part 80 limits.

35. We further condition Montana’s waiver relief on protecting any maritime communications, including Coast Guard operations, from interference to ensure that any primary maritime communications that occur in or near Montana are not interfered with by Montana’s operations. To provide the appropriate protection, Montana must avoid interfering with any current or future Coast Guard or other marine operations. Furthermore, if the Coast Guard or a Part 80 maritime licensee reports interference, Montana must take immediate steps to address or otherwise resolve any harmful interference experienced by any maritime licensee, including, if necessary, immediate cessation of operations on the maritime frequencies authorized under this *Order*.

2. Industrial/Business Pool 450 MHz Frequency

36. Jefferson County is licensed to operate on Industrial/Business frequency 452.175 MHz at a single base station location in Boulder, Montana under PLMR call sign WZN261.⁶⁵ It seeks a waiver of the eligibility requirements of Section 90.35(b)(3)⁶⁶ of the Commission’s rules so that it may add this Industrial/Business Pool frequency to an additional base station location under the same call sign.⁶⁷ We examine this request under the second prong of the waiver test: in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁶⁸ We find that Jefferson County satisfies the second prong of the waiver standard.

⁶² *Id.* at 6.

⁶³ For instance, the general technical standards listed in Subpart I of Part 90 would apply to Montana’s operations on the Part 80 frequencies specified in its applications. *See* 47 C.F.R. §§ 90.201-90.221.

⁶⁴ *See* Montana Applications.

⁶⁵ Jefferson County is licensed to operate on frequency 452.175 MHz at Location 4 with an effective radiated power (ERP) of 30 watts. *See* Call sign WZN261.

⁶⁶ 47 C.F.R. § 90.35(b)(3).

⁶⁷ Jefferson County seeks to add frequency 452.175 MHz to Location 7 at an ERP of 50 watts. *See* ULS File No. 0005028256. *See also* Jefferson IB Waiver.

⁶⁸ 47 C.F.R. § 1.925(b)(3)(ii).

37. First we note that Jefferson County has been operating on this frequency since before 1991. Secondly, we find that allowing Jefferson County to add frequency 452.175 MHz to an additional base station location will have negligible effect on the overall availability of Industrial/Business Pool frequencies in Montana. Although Jefferson County will increase the size of its composite interfering contour on this frequency, we note that it includes with its application a letter from an Industrial/Business frequency coordinator certifying that the application was properly coordinated on the Industrial/Business Pool frequency.⁶⁹ Therefore, we conclude that Jefferson County's proposal to increase the size of its operating "footprint" on this frequency will not create interference concerns for other Industrial/Business users.

38. Absent grant of a waiver, Jefferson County could only expand its system's coverage by adding a new frequency at both sites and retuning all its equipment to the new frequency. Thus, we find strict application of the rule in this instance would be unreasonably burdensome to Jefferson County given that its existing use of the frequency and proposed expansion appear to have little negative effect on Industrial/Business communications in Montana.

39. Finally, we find Jefferson County's proposed expansion of its PLMR operations on frequency 452.175 MHz is in the public interest because it will improve first responder communications by providing radio coverage to un-served areas.⁷⁰

IV. ORDERING CLAUSES.

40. Accordingly, IT IS ORDERED that the waiver requests associated with the applications listed in the attached appendix filed by the Montana Department of Transportation and the County of Jefferson, pursuant to Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, ARE GRANTED.

41. IT IS FURTHER ORDERED that the applications listed in the attached appendix SHALL BE PROCESSED, subject to the following conditions, on Part 80 maritime frequencies:

- The licensee must protect any maritime communications, including Coast Guard operations, from interference. To provide the appropriate protection, the licensee must avoid interfering with any current or future Coast Guard or other marine operations. Furthermore, if the Coast Guard or a Part 80 maritime licensee reports interference, Montana must take immediate steps to address or otherwise resolve any harmful interference experienced, including, if necessary, immediate cessation of operations on the maritime frequencies.
- If the licensee seeks to increase its effective radiated power or antenna height on any of the Part 80 maritime frequencies listed on its license, it must file a new waiver request addressing the magnitude of divergence of its desired operating parameters from Part 80 limits.
- The licensee will be subject to all frequency specific geographic restrictions listed in the attached appendix.

⁶⁹ See RS/AAA Letter.

⁷⁰ Waiver Request at 3.

42. This action is taken under delegated authority pursuant to Sections 0.131, 0.191, 0.331 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.191, 0.331, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

Appendix

Montana Applications Seeking Part 80 VHF Ship and Private Coast Frequencies

<u>ULS File No.</u>	<u>Applicant</u>	<u>Section 80.373(f) Ship and Private Coast Frequencies</u>	<u>Locations Specified on Application</u>	<u>Conditions</u>
0004961951	County of Jefferson	156.600 MHz (Channel 12)	Loc 5 (FX1), Loc 6 (MO), Loc 7 (FX1), and Loc 9 (FX1)	The licensee may only operate on frequency 156.600 MHz at locations within the County of Jefferson.
0005028256	County of Jefferson	156.600 MHz (Channel 12)	Loc 6 (MO), Loc 7 (FX1), Loc 9 (FX1)	The licensee may only operate on frequency 156.600 MHz at locations within the County of Jefferson.
0005276067	Montana Dept. of Transportation	156.990 MHz ⁷¹ (Offset)	Loc 1 (FX1)	None
0005299543	Montana Dept. of Transportation	156.675 MHz (Channel 73)	Loc 1 (MO) Loc 2 (FX1)	None
		156.725 MHz (Channel 74)	Loc 1 (MO) Loc 2 (FX1)	The licensee may only operate on frequency 156.725 MHz at locations south of Line A.

Jefferson County Application Seeking 450 MHz Industrial/Business Frequency

<u>ULS No.</u>	<u>Applicant</u>	<u>Industrial/Business Pool Frequency</u>	<u>Location Where Industrial/Business Pool Frequency is Currently Licensed</u>	<u>Location Where Application Proposes to Add Industrial/Business Frequency</u>
0005028256	County of Jefferson Call Sign WZN261	452.175 MHz	Loc 5 (FX2)	Loc 7 (FX2)

⁷¹ This frequency is offset between ship and private coast frequencies 156.975 MHz (Channel 79A) and 157.000 MHz (Channel 20A). See 47 C.F.R. § 80.373(f).